



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First Class Mail and Facsimile (202) 429-3301

Matthew Sanderson, Esq.
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Caplin & Drysdale
One Thomas Circle, N.W., Suite 1100
Washington, DC 20005

MAR -2 2016

Re: MUR 6830
Tom MacArthur for Congress, Inc. and Ron
Gravino in his official capacity as
treasurer

Dear Mr. Sanderson:

On May 29, 2014, the Federal Election Commission ("Commission") notified your clients, Tom MacArthur for Congress, Inc. and Ron Gravino in his official capacity as treasurer, that it received a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). Upon further review of the allegations contained in the complaint and information supplied by your clients, on February 19, 2016, the Commission voted to dismiss this matter and closed the file.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Blumberg".

Peter Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Tom MacArthur for Congress, Inc. and **MUR: 6830**
6 Ron Grayino in his official capacity as treasurer
7

8 **I. INTRODUCTION**

9 This matter arises from a complaint alleging that the Burlington County Republican
10 Committee and Charles Lambiase in his official capacity as treasurer (the "County Committee")
11 made an in-kind contribution to Tom MacArthur for Congress, Inc. and Ron Gravino in his
12 official capacity as treasurer (the "MacArthur Committee") by allowing the MacArthur
13 Committee to use the County Committee's office space and related office services in the lead up
14 to the June 3, 2014 primary election.¹ The Complaint also asserts that the County Committee
15 had no federal account from which expenditures could be made lawfully and contends that this
16 indicates the alleged in-kind contribution to the MacArthur Committee violated the Act's source
17 prohibitions.² Finally, the Complaint contends that, by failing the report these alleged
18 contributions, the MacArthur Committee violated the Act's reporting requirements.³

19 The MacArthur Committee, the County Committee, and Megan Riffle, the County
20 Committee's Organizational and Political Director, submitted separate responses denying that
21 the MacArthur Committee's use of the office space resulted in a contribution from the County

¹ Compl. at 1-2 (May 22, 2014).

² *Id.* at 2-3.

³ *Id.*

Committee.⁴ The County Committee acknowledged leasing office space to the MacArthur Committee, but asserted that the MacArthur Committee paid rent for its use of the space.⁵

For the reasons discussed below, the Commission exercises its prosecutorial discretion and dismisses the allegations that the MacArthur Committee violated 52 U.S.C. §§ 30104(b), 30116(f), and 30125(e) by accepting and failing to report excessive and prohibited in-kind contributions from the County Committee.⁶

II. FACTUAL AND LEGAL ANALYSIS

The Complaint alleges that during the 2014 Republican primary election for New Jersey's Third Congressional District, the MacArthur Committee used the County Committee's office space as its campaign headquarters, including using the County Committee's telephones, office equipment, staff, and other support services; that such uses constituted impermissible in-kind contributions from the County Committee to the MacArthur Committee; and that the MacArthur Committee failed to disclose these in-kind contributions in its disclosure reports filed with the Commission.⁷

⁴ MacArthur Committee Resp. (July 17, 2014); County Committee Resp. (July 17, 2014); Riffle Resp. (July 28, 2014).

⁵ County Committee Resp. at 2.

⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁷ Compl. at 1-2. The Complaint includes an affidavit from Nicholas Hladick, who attests that on April 24, 2014, he went to the County Committee's headquarters and asked about volunteering for the MacArthur campaign because he had "heard that the MacArthur campaign was being run out of the Burlington GOP's office." Affidavit of Nicholas Hladick ¶ 1 (May 6, 2014) ("Hladick Aff.") (attached as Exhibit 1 to the Complaint). Hladick further asserts that Respondent Megan Riffle (whom Hladick erroneously refers to as "Megan Ripple") and a person named "Mike" told him that volunteers for the MacArthur campaign worked from the County Committee's offices and that, as a volunteer at this location, he would make telephone calls, prepare mailers, attend events, participate in "meet-and-greets" and fundraising, and coordinate community events. *Id.* at ¶¶ 2, 4-6. Hladick states that he left the County Committee's offices without doing any volunteer work for MacArthur. *Id.* at ¶ 7.

1 Respondents contend that no in-kind contributions resulted from the MacArthur
2 Committee's use of the County Committee's office space.⁸ The County Committee states that it
3 has rented the same privately owned building for decades, that it agreed in April 2014 to sub-
4 lease extra space in the building to the MacArthur Committee,⁹ and that the sub-lease included
5 certain utilities and incidental expenses.¹⁰ The MacArthur Committee, moreover, contends that
6 this space did not serve as its campaign headquarters,¹¹ but rather as a satellite office where it
7 "maintained only a limited presence"¹² — having just one staff member at first, and reaching a
8 maximum of only four — and that it paid a vendor, Fitzsimmons Communication, for telephone
9 services related to phone banks the MacArthur Committee operated out of the County
10 Committee's offices.¹³

11 It is unclear on what date the MacArthur Committee first occupied the office space.
12 Although the County Committee states that the lease was entered into in "April 2014," the
13 MacArthur Committee explains that one staff member (Harrison Neely) began working from the
14 County Committee's office space as early as March 24, 2014.¹⁴

⁸ MacArthur Committee Resp. at 1-3; County Committee Resp. at 2-3.

⁹ Neither the County Committee nor the MacArthur Committee submitted with their responses a copy of a sublease agreement.

¹⁰ County Committee Resp. at 2.

¹¹ MacArthur Committee Resp. at 2. The MacArthur Committee's official address filed with the Commission is P.O. Box 225, Colonia, N.J. 07067. The MacArthur Committee attests that the address of its official campaign headquarters is 340 U.S. Route 9, Bayville, N.J. 08721. See Affidavit of Harrison Neely ¶ 5 (July 16, 2014) ("Neely Aff.") (attached as Exhibit 1 to the MacArthur Committee Response).

¹² MacArthur Committee Resp. at 2.

¹³ *Id.* at 3, Ex. A. The MacArthur Committee asserts that it disclosed these disbursements in disclosure reports it filed with the Commission. See, e.g., 2014 MacArthur Committee Pre-Primary Report (May 22, 2014).

¹⁴ The MacArthur Committee provided an affidavit from Neely, its Burlington County Regional Director, attesting that he began working for the MacArthur campaign on March 24, 2014, and that he was the only campaign staff member working at the County Committee location until mid-April 2014. Affidavit of Harrison Neely ¶ 2-4, 7 (July 16, 2014) ("Neely Aff.") (attached as Exhibit 1 to the MacArthur Committee Response). Neely states that the

Both the MacArthur Committee's and the County Committee's responses attach a copy of a check dated June 20, 2014, that the MacArthur Committee issued to the County Committee in the amount of \$9,952. The check's memo entry states: "rent & services utilities." Respondents assert that this payment was for rent and associated expenses related to the MacArthur Committee's use of the space in the County Committee's building from late March to the June 3, 2014 primary election.¹⁵

The County Committee said that it received the check after it "requested payment from" the MacArthur Committee "shortly after the primary election."¹⁶ The MacArthur Committee states that it was not required to pay for any of its use of the County Committee's facilities under the Act but did so "out of an abundance of caution"; however, it contends in the alternative that, nevertheless, the payment was made within a commercially reasonable time and thus no contribution could have occurred.¹⁷

The Commission concludes that any further pursuit of the allegations here would be an imprudent use of its resources, whether or not the MacArthur Committee's use of the office space and related services prior to the primary election constituted in-kind contributions from the County Committee. Assuming that the \$9,952 payment for "rent & services utilities" was based on the fair-market value of the rent, the MacArthur Committee has paid the County Committee for its use of the office space during that period. In any event, the record indicates that any

MacArthur campaign's headquarters was located in Bayville, N.J., not in the County Committee's office in Mount Holly, N.J. He further avers that MacArthur Committee staff working at the County Committee's offices used personal laptops, and telephones, equipment, and supplies provided by the MacArthur Committee for campaign related work, and the campaign paid its staff and service providers with its own funds. *Id.* at ¶¶ 5-6, 8-10.

¹⁵ See MacArthur Committee Resp. at 3; see also *id.*, Ex. B; County Committee Resp. at 3, Ex. A.

¹⁶ County Committee Resp. at 2. The County Committee did not attach a written request or invoice with its response.

¹⁷ MacArthur Committee Resp. at 2 (citing 11 C.F.R. §§ 106.1(c), 116.3).

1 potential benefit the MacArthur Committee may have derived from the use of the space likely
2 would have been modest because the satellite office was a small operation at all relevant times
3 and it appears that the MacArthur Committee did not use additional County Committee
4 resources.¹⁸

5 Given these factual circumstances, the Commission exercises its prosecutorial discretion
6 and dismisses the allegations that the MacArthur Committee violated 52 U.S.C. §§ 30104(b),
7 30116(f), and 30125(e) by accepting and failing to report excessive and prohibited in-kind
8 contributions from the County Committee.¹⁹

¹⁸ Neely Aff. ¶¶ 8-9; cf. MUR 6463 (Antaramian) (finding reason to believe that the DNC received an in-kind contribution by conducting its operations in sub-leased office space for seven months without paying \$30,000 in rent until after a lawsuit was filed).

¹⁹ See *Heckler*, 470 U.S. 821.